

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOHN HARPER,

: Civil Action No. 10-7555

Plaintiff,

v.

MR. ALBIO, Counselor, et. al.,

Defendants.

**ORDER**

AND NOW, this        day of       , 2011, upon consideration of the Plaintiff's Motion to Compel the Attorney General to Return Plaintiff's Parole File and the Commonwealth Defendants' response in opposition thereto, it is hereby ORDERED that the Motion to Compel is DENIED.

BY THE COURT:

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THOMAS N. O'NEILL, JR., S.J.

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FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOHN HARPER,  
Plaintiff,  
v.  
MR. ALBIO, Counselor, et. al.,  
Defendants.

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**COMMONWEALTH DEFENDANTS' RESPONSE IN OPPOSITION TO PLAINTIFF'S  
MOTION TO COMPEL THE ATTORNEY GENERAL TO RETURN  
PLAINTIFF'S PAROLE BOARD FILE**

Defendants Jaime Luquis and Jeffrey Albo ("Commonwealth Defendants") hereby respond in opposition to Plaintiff's Motion to Compel the Attorney General to Return Plaintiff's Parole Board File.

Plaintiff John Harper, an inmate presently housed at the State Correctional Institution at Frackville ("Frackville") and formerly housed at the Community Corrections Center at Allentown ("CCC Allentown"), commenced this case pro se pursuant to 42 U.S.C. § 1983 ("Section 1983"). Plaintiff alleged in his Amended Complaint that while he was housed at CCC Allentown in February 2010, another inmate, Alvin Davis, punched him in the head and eye, which gave him a swollen left eye and a broken hand. See Amended Complaint at p. 4. The Commonwealth Defendants filed a Motion to Dismiss Plaintiff's Amended Complaint on March 21, 2011. The Motion to Dismiss is pending.

On August 15, 2011, Plaintiff filed a Motion to Compel the Attorney General's Office to return his parole file. In his motion, Harper claims that in July 2011, he was called down to the parole office at Frackville for a review for reconsideration for parole. Pl. Motion at ¶5. At that

time, he was told that he could not be reviewed because his original parole file was located at the Attorney General's Office. Id. Plaintiff claims that the then-Attorney General, William Ryan, refused to return his file after a request to do so was sent to him and that this was in retaliation for his filing a civil action against the Commonwealth Defendants in the instant case. Id. at ¶¶5,10. He claims that, because the Attorney General's Office held his parole board file, he was denied his right to be seen by the parole board. Id. at ¶12. Harper requests an order from the court to compel the Attorney General to return his file. Id. at pp.1,4.

The attorney for the Commonwealth Defendants returned plaintiff's parole file to the Parole Board in July 2011. The Parole Board shipped the file to Frackville on August 4, 2011. Frackville received the file on August 12, 2011. Plaintiff's parole review was scheduled on August 18, 2011. Because plaintiff complains that he was unable to have a parole review and in fact a review occurred on August 18, 2011, his Motion to Compel is now moot.

WHEREFORE, the Commonwealth Defendants request that the Court deny Plaintiff's Motion to Compel.

LINDA L. KELLY  
ATTORNEY GENERAL

By: /s/ Laurie R. Jubelirer

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UNITED STATES DISTRICT COURT  
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**CERTIFICATE OF SERVICE**

I, Laurie R. Jubelirer, Deputy Attorney General, hereby certify that the foregoing Response in Opposition to Plaintiff's Motion to Compel was filed electronically on August 18, 2011 and is available for viewing and downloading from the ECF system. I further certify that a true and correct copy of said document was served on August 19, 2011, by United States mail, first class postage prepaid to:

John Harper, #FD-2189  
State Correctional Institution  
at Frackville  
1111 Altamont Blvd.  
Frackville, PA 17931-2699

LINDA L. KELLY  
ATTORNEY GENERAL

BY: /s/ LAURIE R. JUBELIRER  
Laurie R. Jubelirer  
Deputy Attorney General  
Identification No. 50436